

REMARKS / ARGUMENTS

1. Response to May 25, 2010 Non-Final Office Action

For the convenience of the Examiner and clarity of purpose, Assignee has reprinted the substance of the Office Action in ***bolded and italicized font***. Assignee's arguments immediately follow in regular font.

Claims 1-6, 9-11, 13-16, 21-22 and 25-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop et al. (US 6,904,458), hereinafter referred to as Bishop, in view of Monitoring Your UPS With apcupsd, hereinafter referred to as Facchetti.

a. As per claim 1, Bishop discloses running an apparatus monitoring program on a monitoring computer on the network (Col. 9 lines 14-25);

configuring a subordinate program with the monitoring program (Col. 9 lines 14-50 — note that application(s) to be installed to the client are subordinate to the monitoring software of the computing component in that the computing component has complete access and control over the application(s) to be installed at the client both at time of installation and at run-time);

installing the configured subordinate program from the monitoring computer to a target computer on the network (Col. 9 lines 26-50);

transmitting a subordinate program instruction from the monitoring computer across the network to the target computer (Col. 9 lines 51-65); and

changing an operational characteristic of the target computer based on the subordinate program instruction (Col. 8 lines 1-15, Col. 9 lines 51-65). However, the prior art of Bishop fails to explicitly disclose wherein the operational status of the supporting apparatus is monitored with the monitoring program and generating from the monitoring program a subordinate program instruction based on the operational status of the supporting apparatus.

Facchetti teaches wherein the operational status of the supporting apparatus is monitored with the monitoring program and generating from the monitoring program a subordinate program instruction based on the operational status of the supporting apparatus (Page 3 Para. 1-2 — see apcupsd UPS monitoring, Page 4 — Running apcupsd - Para. 4-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of monitoring a supporting apparatus with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of monitoring the status of a UPS device, and permitting a shut-down process if the monitoring program determines that the UPS has presented an alarm to the monitoring program (Page 4 — Running apcupsd — Para. 4-7).

The Office may reject a claim as obvious ***only*** when each and every claim limitation is disclosed by a proper combination of prior art references. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18 (1966). To establish a *prima facie* showing of obviousness, the Office may rely only upon ***analogous prior art*** that is demonstrably within the inventor's field of

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endeavor or that is demonstrably concerned with the specific problem to be solved may be relied upon. Non-analogous art may not be used. Second, the Office must state, "explicitly or implicitly, in view of the prior art applied, an indication of the **level of ordinary skill**. Third, the Office must establish the **differences** between the prior art and the claimed subject matter. Fourth, the Office must **articulate its reasoning**, with some rational underpinning, for the legal conclusion that combining the analogous prior art would be obvious to a person of ordinary skill. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

As an initial matter, Assignee does not accede to the Office's characterization of biship and/or Facchetti as applied to the claims and Assignee respectfully reserves its right to challenge that characterization in the future. Furthermore, Assignee respectfully challenges the Office's factual finding of the level of ordinary skill applicable to this case and hereby requests a clear statement from the Office explaining how such conclusion was reach and what evidence supports such conclusion.

In the present case, claim 1 recites "configuring a subordinate program with the monitoring program". For example, paragraphs [0028] and [0031] explain:

[0028] To achieve the compatibility of the subordinate programs 70 , 72 , 74 , and 76 with various software and hardware products, the subordinate programs 70 , 72 , 74 , and 76 are written in a portable code, which eases the conversion of the programs to run on various operating system platforms. For example, the subordinate programs 70 , 72 , 74 , and 76 written in a computer language, such as C, could be compiled and run easily on all the target computers 60 , 62 , 64 , and 66 of network 50 , regardless of the operating system, with few modifications. In contrast, programs based on other computer languages may require a large support mechanism on the target computer 60 , 62 , 64 , and 66 and may be expensive to port, which may be undesirable.

...
[0031] The subordinate programs 70 , 72 , 74 , and 76 are pre-configured using monitoring program 22 . For example, pre-configuration of the subordinate programs 70 , 72 , 74 , and 76 can be handled centrally by a network administrator. Using monitoring program 22 , the network administrator remotely

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configures the subordinate programs 70 , 72 , 74 , and 76 before installation on the target computers 60 , 62 , 64 , and 66 . The pre-configuration can designate the source of shutdown instructions to which the target computers 60 , 62 , 64 , and 66 are to respond. The pre-configuration can also set shutdown routines or a shutdown delay for the target computers 60 , 62 , 64 , and 66 to perform once instructed.

Thus, the claimed embodiment actually requires some configuration of the “subordinate program with the monitoring program”.

In contrast, Bishop teaches no such configuration. While Bishop’s computing component 82 is “configured” quite a bit in the cited passage, none of software is actually configured, much less any configuration of the “subordinate program with the monitoring program”, as claimed. Of course, Bishop’s computing component 82 is actually part of his client computer 76. Therefore, any configuration done at that level is not done “with the monitoring program”, as claimed. Rather, Bishop merely teaches transferring software, apparently pre-configured, from his management machine 80 to the computing component 82 on his client computer 76. Thus, Bishop is devoid of any teaching of “configuring a subordinate program with the monitoring program”, as claimed. At the very least, each and every claim limitation is not disclosed by any combination of Bishop and/or Facchetti.

For at least these reasons, Assignee respectfully submits that claim 1 is patentable over the disclosure and teaching of Bishop and/or Facchetti. Reconsideration and withdrawal of this rejection is requested. The arguments and amendments discussed herein concerning the patentability of claim 1 apply only to claim 1 and do not apply to other claims or to the same or similar words or phrases in other claims.

*As per claims 10 and 14, Bishop discloses a system comprising:
a subordinate program configured by the monitoring program and adapted to be
installed on the target computer by the monitoring program, the subordinate program*

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adapted to receive a predetermined instruction and performing a shutdown routine of an affected target computer (Col. 8 lines 1-17, Col. 9 lines 14-50). However, the prior art of Bishop fails to explicitly disclose the claimed first through third routines associated with the monitoring program.

Facchetti teaches a monitoring computer having a monitoring program and adapted to receive data from the apparatus, the monitoring program comprising:

a first routine determining an alarm condition of the apparatus from the data (Page 4 — Running apcupsd — Para. 4), a second routine determining a target computer on the network effected by the alarm condition of the apparatus (Page 4 — Running apcupsd — Para. 5-7, Page 5 — Networked Configuration — Para. 1-2, Listing 3- 4), and a third routine sending a predetermined shutdown instruction to the affected target computer over the network (Page 4 — Running apcupsd — Para. 6-7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of detecting an alarm condition, a target computer affected by the alarm condition, and sending a predetermined instruction to the affected target computer over the network with the prior art of Bishop. One of ordinary skill in the art would have done so for the purpose of allowing remote master control of computers connected to a UPS, wherein the network master sends the UPS' alerts to the slave allowing a master to send a shut down command to affected computer to ensure data and hardware safety (Page 4 — Running apcupsd — Para. 6).

Claim 10 recites “a second routine for determining a target computer on the network affected by the alarm condition of the apparatus”. Claim 14 recites “determine a computer on the network affected by the alarm condition of the apparatus”. For example, paragraph [0055] explains:

[0055] The monitoring program receives the alarm signal (Block 230). An optional verification routine can be performed to determine the correct receipt of the alarm signal using transfer protocol. The monitoring program then determines which target computers are affected by the alarm condition (Block 232). For example, a water leak may occur in a part of a building or zone of a network and may potentially compromise a number of target computers. A water detector may detect the water and send the alarm to the monitoring program. The monitoring program then determines the target computers that are dependent upon the water detector or are affected by the water leak. Once the affected target computers are determined, the monitoring program sends a shutdown signal to the subordinate programs of the affected target computers (Block 234).

Thus, the claimed embodiment actually requires some sort of determination to be made as to which target computer is being “affected by the alarm condition”.

In contrast, Facchetti merely sends his UPS' alerts to all slaves. There is no determination made as to which target computer is being “affected by the alarm condition”,

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because in every case all slaves are equally affected. In other words, because in every case all slaves are equally affected and the UPS' alerts are sent to all slaves, Facchetti fails to teach, and does not need, any determining step, such as the one claimed. Thus, At the very least, each and every claim limitation is not disclosed by any combination of Bishop and/or Facchetti.

For at least these reasons, Assignee respectfully submits that claims 10 and 14 is patentable over the disclosure and teaching of Bishop and/or Facchetti. Reconsideration and withdrawal of this rejection is requested. The arguments and amendments discussed herein concerning the patentability of claims 10 and 14 apply only to claims 10 and 14 and do not apply to other claims or to the same or similar words or phrases in other claims.

*As per claim 21, Bishop discloses a system comprising:
a monitoring computer and a target computer (Figure 1, Col. 9 lines 26- 50);
a network coupling the monitoring computer and the target computer (Figure 1);
a monitoring computer adapted to configure a subordinate program to be installed
over the network on a target computer by the monitoring program and install the
subordinate program on the target computer over the network (Col. 9 lines 26-50);
the target computer comprising an installed subordinate program and adapted to
receive a network message including a shutdown instruction and shut down the target
computer based on the received shutdown instruction (Col. 8 lines 1-17, Col. 9 lines 14-50).
However, the prior art of Bishop fails to explicitly disclose the UPS and receiving and
determining steps performed by the monitoring computer as claimed.*

*Facchetti teaches a monitoring program adapted to receive a network message
including data from the UPS (Page 4 - Running apcupsd - Para. 4), determine an alarm
condition of the UPS from the data in the message (Page 4 - Running apcupsd - Para. 4), and
determine a computer on the network affected by the alarm condition of the UPS (Page 4 -
Running apcupsd - Para. 5-7, Page 5 — Networked Configuration — Para. 1-2, Listings 3-4),
wherein the UPS sends a shutdown instruction (Page 4 - Running apcupsd - Para. 4, 6). It
would have been obvious to one having ordinary skill in the art at the time the invention was
made to incorporate the use of detecting an alarm condition, a target computer affected by
the alarm condition, and sending a predetermined instruction to the affected target
computer over the network with the prior art of Bishop. One of ordinary skill in the art would
have done so for the purpose of providing a UPS management software which monitors a
locally attached UPS device for alarm conditions, and in the event of an alarm, functions to
provide a shutdown function on computers which are all supported by the same UPS (Page
4 – Running apcupsd - Para. 4, 6).*

Claim 21 recites "a network coupling the uninterruptible power supply, the monitoring computer, and the target computer".

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The Office asserts that Bishop teaches “a network coupling the monitoring computer and the target computer (Figure 1)”. However, the Office appears to overlook that the claim requires the uninterruptible power supply to also be on the “network coupling ***the uninterruptible power supply***, the monitoring computer, ***and*** the target computer”, emphasis added. The office acknowledges that “Bishop fails to explicitly disclose the UPS”. Therefore, it cannot be said that Bishop discloses “a network coupling ***the uninterruptible power supply***, the monitoring computer, ***and*** the target computer”, emphasis added, as claimed.

Facchetti fails to cure this defect as there Facchetti appears to likewise fail to teach any one “network coupling ***the uninterruptible power supply***, the monitoring computer, ***and*** the target computer”, emphasis added, as claimed. In contrast, Facchetti teaches, “[t]he slave apcupsd shares the same configuration except that instead of using the serial port, it will listen to my.network.master.com to get all the information needed to operate correctly.” Page 5 — Networked Configuration — Para. 1-2. Thus, Facchetti explicitly teaches his slave, or target computer, being on a separate network from the UPS.

In addition, claim 21 recites “determine a computer on the network affected by the alarm condition of the uninterruptible power supply” and “configure a subordinate program to be installed over the network on a target computer by the monitoring program”. As discussed above, no combination of Bishop and/or Facchetti teaches the claimed determining or configuration steps. Thus, at the very least, each and every claim limitation is not disclosed by any combination of Bishop and/or Facchetti.

For at least these reasons, Assignee respectfully submits that claim 21 is patentable over the disclosure and teaching of Bishop and/or Facchetti. Reconsideration and withdrawal of this rejection is requested. The arguments and amendments discussed herein concerning the patentability of claim 21 apply only to claim 21 and do not apply to other claims or to the same

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or similar words or phrases in other claims.

2. New Claims 34 - 37

New claims 34 - 37 are presented herein.

3. Conclusion

In responding to this Office Action, Assignee has presented only those arguments and made only those amendments that Assignee believes are warranted. Assignee has not, for example, responded to every factual or legal issue raised by the Office, and Assignee has not presented every argument supporting patentability that may be relevant. The decision not to address a factual or legal issue raised or to present a certain argument in support shall not be construed as Assignee's agreement with the Office on such issue or effect a waiver of Assignee's right to address such issues or make such arguments in the future.

Assignee submits that each claim presented herein is patentable. A timely notice of allowance is respectfully requested.

Assignee thanks the Examiner for his consideration and effort on this file. If there are any questions or if additional information is needed, the Examiner is invited to telephone or email the undersigned.

Respectfully submitted,
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